

Application No. 09/359,265  
Technology Center 2100  
Attorney Docket No.: 99-055

PATENT APPEAL

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellants: Jay S. Walker, Daniel ) Group Art Unit: 2175  
              Tedesco, James A. )  
              Jorasch, Keith Berner, and ) Examiner: RIMELL, Samuel G.  
              Kathlene Van Luchene )  
  ) **APPEAL BRIEF**  
Application No.: 09/359,265 )  
  ) Attorney Docket No. 99-055  
Filed: July 22, 1999 )  
For: SYSTEM AND METHOD FOR )  
      PRICING A TRAVEL )  
      PRODUCT BASED ON A )  
      TRAVELER'S SPECIFIED )  
      DEGREE OF FLEXIBILITY )

**BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed February 20, 2004, rejecting Claims 3, 4, 56-69, 72-86 and 89.

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## REAL PARTY IN INTEREST

The present application is assigned to Walker Digital, LLC, 1177 High Ridge Road, Suite 128, Stamford, CT 06905.

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## RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative and Appellants' assignee know of no interferences or appeals that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

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## STATUS OF CLAIMS

Claims 95 and 96 are allowed and are not being appealed.

Claims 3, 4, 56-69, 72-86 and 89 are rejected and are being appealed.

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## STATUS OF AMENDMENTS

No Amendments were filed subsequent to the final rejection of Claims 3, 4, 56-69, 72-86 and 89 in the Final Office Action mailed February 20, 2004.

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## SUMMARY OF CLAIMED SUBJECT MATTER

Concise explanations of the independent claims are provided below. The summaries include sufficient information about the claimed subject matter so that an informed review of the Examiner's adverse determination of patentability can be made.

As required by 37 C.F.R. § 41.37(c)(1)(v), reference is made to the Specification. Any such reference:

- (i) is by way of example of the claimed subject matter only;
- (ii) is to be considered as potentially useful in clarifying the particular subject matter of the particular independent claim being explained (and not other claims or "the invention" as a whole), unless explicitly stated otherwise; and
- (iii) is not to be considered as broadening or narrowing the scope of any recited term from its meaning to one of ordinary skill in the art, unless explicitly stated otherwise.

Claims 3, 4, 72, and 89 are independent.

### 1. Independent Claim 3

Independent Claim 3 recites a method for pricing a travel product. Claim 3 provides for *obtaining a respective flexibility range from each of two different customers. At least one travel product (e.g., an airline ticket) is identified that satisfies both flexibility ranges.* For some examples of obtaining a flexibility range from a customer and identifying at least one travel product satisfying the



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flexibility range, see Specification, page 13, line 7 to page 14, line 9; FIG. 7 (700); FIG. 6A (605, 630).

*Two prices are determined for sale of that same identified travel product—one price is based on the first flexibility range, and another price is based on the second flexibility range. For some general discussion of pricing a travel product in accordance with a traveler's individual flexibility, see Specification, page 3, line 19 to page 4, line 20.*

As noted above, Claim 3 recites a method for pricing a travel product. The *determined price for sale of the identified travel product* encompasses a price at which the identified travel product is for sale (e.g., to a traveler) or otherwise available for purchase at that price. The embodiments of Claim 3 provide for determining *the first price for sale of the identified travel product* in a particular manner: *scoring said first flexibility range to obtain a score and using said score to determine a percentage discount off of an established price.* For example, a flexibility score may be calculated based on the obtained flexibility range. A *percentage discount* may be determined based on the obtained score (e.g., by prorating the obtained score). The determined discount may be applied to an established price (e.g., a retail price) to *determine the first price for sale of the travel product based on the first flexibility range.* For some examples of pricing a travel product for sale based on a flexibility range that is scored and used to determine a percentage discount, see Specification, page 17, line 5 to page 18, line 2; page 14, lines 10-14; page 11, line 1 to page 12, line 10; FIGs. 4A-4B (400, 460, 470); FIG. 6A (625); FIG. 7 (700).

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## 2. Independent Claim 4

Independent Claim 4 recites a method for pricing a travel product. Claim 4 provides for *obtaining a respective flexibility range from each of two different customers. At least one travel product (e.g., an airline ticket) is identified that satisfies both flexibility ranges.* For some examples of obtaining a flexibility range from a customer and identifying at least one travel product satisfying the flexibility range, see Specification, page 13, line 7 to page 14, line 9; FIG. 7 (700); FIG. 6A (605, 630).

*Two prices are determined for sale of that same identified travel product—one price is based on the first flexibility range, and another price is based on the second flexibility range.* For some general discussion of pricing a travel product in accordance with a traveler's individual flexibility, see Specification, page 3, line 19 to page 4, line 20.

As noted above, Claim 4 recites a method for pricing a travel product. The *determined price for sale of the identified travel product* encompasses a price at which the identified travel product is for sale (e.g., to a traveler) or otherwise available for purchase at that price. The embodiments of Claim 4 provide for determining *the first price for sale of the identified travel product* in a particular manner: *scoring said first flexibility range to obtain a score and using said score to determine a monetary discount off of an established price.* For example, a traveler's degree of flexibility may be evaluated and a corresponding price determined based on the stated degree of flexibility. The score may be, for example, a flexibility rating prorated relative to a leisure-business traveler continuum. The price may be obtained by, for example, discounting an

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established price. [See, e.g., Specification, page 4, lines 10-13; page 7, lines 9-11]. A *monetary discount* may be also determined by, for example, totaling all of the applicable monetary discount amounts. The total discount may be applied to an established price (e.g., a retail price) to *determine the first price for sale of the travel product based on the first flexibility range*. For some examples of pricing a travel product for sale based on a flexibility range that is scored and used to determine a monetary discount, see Specification, page 17, line 5 to page 18, line 2; page 14, lines 10-14; page 11, line 1 to page 12, line 15; FIGs. 4A-4B (400, 460, 470); FIG. 6A (625); FIG. 7 (700). It will be understood that examples related to percentage discounts off of a monetary value (e.g., an estimated commercial fare) would also suggest to one having ordinary skill in the art a *monetary discount*.

### 3. Independent Claim 72

Independent Claim 72 recites an article of manufacture. The claimed article of manufacture is comprised of a computer-readable medium having computer-readable code means embodied thereon. The computer-readable code means comprises steps. The recited steps of Claim 72 *obtain a respective flexibility range from each of two different customers. At least one travel product (e.g., an airline ticket) is identified that satisfies both flexibility ranges*. For some examples of obtaining a flexibility range from a customer and identifying at least one travel product satisfying the flexibility range, see Specification, page 13, line 7 to page 14, line 9; FIG. 7 (700); FIG. 6A (605, 630).

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Recited steps also provide that *two prices are determined for sale of that same identified travel product—one price is based on the first flexibility range, and another price is based on the second flexibility range*. For some general discussion of pricing a travel product in accordance with a traveler's individual flexibility, see Specification, page 3, line 19 to page 4, line 20.

The *determined price for sale of the identified travel product* encompasses a price at which the identified travel product is for sale (e.g., to a traveler) or otherwise available for purchase at that price. The embodiments of Claim 72 provide *the first price for sale of the identified travel product* is determined in a particular manner: *scoring the first flexibility range to obtain a score and using the score to determine a percentage discount off of an established price*. For example, a flexibility score may be calculated based on the obtained flexibility range. A *percentage discount* may be determined based on the obtained score (e.g., by prorating the obtained score). The determined discount may be applied to an established price (e.g., a retail price) to *determine the first price for sale of the travel product based on the first flexibility range*. For some examples of pricing a travel product for sale based on a flexibility range that is scored and used to determine a percentage discount, see Specification, page 17, line 5 to page 18, line 2; page 14, lines 10-14; page 11, line 1 to page 12, line 10; FIGs. 4A-4B (400, 460, 470); FIG. 6A (625); FIG. 7 (700).

#### **4. Independent Claim 89**

Independent Claim 89 recites an article of manufacture. The claimed article of manufacture is comprised of a computer-readable medium having

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computer-readable code means embodied thereon. The computer-readable code means comprises steps. The recited steps of Claim 89 *obtain a respective flexibility range from each of two different customers. At least one travel product (e.g., an airline ticket) is identified that satisfies both flexibility ranges.* For some examples of obtaining a flexibility range from a customer and identifying at least one travel product satisfying the flexibility range, see Specification, page 13, line 7 to page 14, line 9; FIG. 7 (700); FIG. 6A (605, 630).

Recited steps also provide that *two prices are determined for sale of that same identified travel product—one price is based on the first flexibility range, and another price is based on the second flexibility range.* For some general discussion of pricing a travel product in accordance with a traveler's individual flexibility, see Specification, page 3, line 19 to page 4, line 20.

The *determined price for sale of the identified travel product* encompasses a price at which the identified travel product is for sale (e.g., to a traveler) or otherwise available for purchase at that price. The embodiments of Claim 89 provide *the first price for sale of the identified travel product is determined in a particular manner: scoring said first flexibility range to obtain a score and using said score to determine a monetary discount off of an established price.* For example, a traveler's degree of flexibility may be evaluated and a corresponding price determined based on the stated degree of flexibility. The score may be, for example, a flexibility rating prorated relative to a leisure-business traveler continuum. The price may be obtained by, for example, discounting an established price. [See, e.g., Specification, page 4, lines 10-13; page 7, lines 9-11]. A *monetary discount* may be also determined by, for example, totaling all of

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the applicable monetary discount amounts. The total discount may be applied to an established price (*e.g.*, a retail price) to *determine the first price for sale of the travel product based on the first flexibility range*. For some examples of pricing a travel product for sale based on a flexibility range that is scored and used to determine a monetary discount, see Specification, page 17, line 5 to page 18, line 2; page 14, lines 10-14; page 11, line 1 to page 12, line 15; FIGs. 4A-4B (400, 460, 470); FIG. 6A (625); FIG. 7 (700). It will be understood that examples related to percentage discounts off of a monetary value (*e.g.*, an estimated commercial fare) would also suggest to one having ordinary skill in the art a *monetary discount*.

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# **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 3, 4, 56-69, 72-86 and 89 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,134,534 issued to Walker et al. (hereinafter "Walker '534 patent").

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## ARGUMENTS

### 1. Summary of Arguments

The Section 102(e) rejections fail because the Examiner has not made a *prima facie* case of anticipation, and in any event no reference is of record that teaches all of the features of any claim.

The rejection of the claims as anticipated by the Walker '534 patent is flawed because the Walker '534 patent completely lacks any hint of either:

A. (i) *determining a first price for sale of said identified travel product based on a first flexibility range obtained from a first customer and (ii) determining a second price for sale of the same identified travel product based on a second flexibility range obtained from a second customer* (each of independent Claims 3, 4, 72 and 89);

**OR**

B. *using a score to determine a [percentage or monetary] discount off of an established price* (each of independent Claims 3, 4, 72 and 89);

**OR**

C. *providing a voucher to a customer to enable the purchase of an identified travel product* (Claims 67 and 84).

The Examiner has relied on an unreasonable interpretation of the Walker '534 patent and of the recited claim language in asserting that the Walker '534 patent discloses all of the limitations A – C. In particular, the Examiner asserts that a “penalty” charged to a customer when the customer fails to book an airline ticket (as discussed in the Walker '534 patent) would be interpreted by one of



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ordinary skill in the art as *a price for sale of a travel product based on a flexibility range*. The Examiner does not support this radical interpretation with any evidence made of record.

Accordingly, the rejections are inappropriate and Appellants respectfully request that the rejections be reversed.

## 2. Form of Appeal Brief

In the arguments herein, limitations of the claims are indicated in *italics* and the references of record are indicated by underlining.

In separate arguments of patentability of different Groups of claims, Appellants have, where possible, referred to prior arguments to avoid undue repetition.

In the arguments below, Appellants refer to:

- Seventh Office Action: Final Office Action mailed February 20, 2004 (Paper No. 23);
- Appellants' Interview Summary: Appellants' summary of telephone interview held November 26, 2003, mailed December 1, 2003;
- Third Interview Summary: Examiner's summary of telephone interview held November 26, 2003, mailed December 1, 2003 (Paper No. 20);

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### 3. Section 102(e) Rejection

Claims 3, 4, 56-69, 72-86 and 89 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,134,534 issued to Walker et al. (hereinafter "Walker '534 patent").

Claims 3, 4, 56-66, 68, 69, 72-83, 85, 86, and 89 are argued as a separate group (GROUP I).

Claims 67 and 84 are argued as a separate group (GROUP II).

#### 3.1. GROUP I: Claims 3, 4, 56-66, 68, 69, 72-83, 85, 86, and 89

GROUP I includes Claims 3, 4, 56-66, 68, 69, 72-83, 85, 86, and 89. These claims are rejected under Section 102(e) as being anticipated by the Walker '534 patent. Claims 3, 4, 72 and 89 are independent.

The rejection of GROUP I is flawed because the Examiner has not made a prima facie case of anticipation:

- the Examiner has misinterpreted a penalty imposed on a customer for failing to book an airline ticket as suggesting the recited limitation of a *price for a sale of a travel product*;
- the Examiner has ignored the limitation of *using a score to determine a [percentage or monetary] discount off of an established price*
- no substantial evidence that such features were known has been provided

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### **3.1.1. Independent Claims 3, 4, 72, and 89**

All of the independent claims in GROUP I (Claims 3, 4, 72, and 89) generally contain the following limitations:

*obtaining a first flexibility range from a first customer*

*obtaining a second flexibility range from a second customer*

*identifying at least one travel product that satisfies said first flexibility range and said second flexibility range*

*determining a first price for sale of said identified travel product based on said first flexibility range*

*determining a second price for sale of said identified travel product based on said second flexibility range*

*wherein said first price is determined by scoring said first flexibility range to obtain a score and using said score to determine a [percentage OR monetary] discount off of an established price*

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### **3.1.2. No Prima Facie Showing of Anticipation of the Claims of GROUP I**

A reading of the rejections of the claim of GROUP I reveals that the Examiner has consistently ignored or unreasonably interpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a *prima facie* case of anticipation of the claims of GROUP I.

### **3.1.3. Proper Legal Standard for Anticipation**

Anticipation requires identity of the claimed process and a process of the prior art; the claimed process, including each step thereof, must have been described or embodied, either expressly or inherently, in a single reference. Minnesota Min. & Mfg. Co., v. Johnson & Johnson Orthopedics, Inc., 976 F.2d 1559 (Fed. Cir. 1992); Glaverbel S.A. v. Northlake Mkt'g & Supp., Inc., 45 F.3d 1550 (Fed. Cir. 1995).

The elements of the claim must either be inherent or disclosed expressly in the reference. Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560 (Fed. Cir. 1988).

There must not be any differences between the claimed invention and the prior art disclosure, as viewed by a person of ordinary skill in the art, for anticipation to exist. Scripps Clinic & Res. Found. v. Genentech, Inc., 927 F.2d 1565 (Fed. Cir. 1991). Thus, the absence of any claim element from the reference negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565 (Fed. Cir. 1986).

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Further, “[f]or a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art. See In re Spada, 911 F.2d 705, 708, 15 U.S.P.Q.2D (BNA) 1655, 1657 (Fed. Cir. 1990) (‘The [prior art] reference must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.’ (citations omitted)). Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. An expert’s conclusory testimony, unsupported by the documentary evidence, cannot supplant the requirement of anticipatory disclosure in the prior art reference itself. See Jamesbury Corp. v. Litton Indus. Prods., Inc., 756 F.2d 1556, 1563, 225 U.S.P.Q. (BNA) 253, 257-58 (Fed. Cir. 1985)”. Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461 (Fed. Cir. 1997).

The PTO is permitted to give claim language its “broadest reasonable interpretation” during prosecution. The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). “[I]t would be unreasonable for the PTO to ignore any interpretive guidance afforded by the applicant’s written description...: as an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained

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in the applicant's specification." In re Morris, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997).

**3.1.4. No substantial evidence of determining a price for sale of a travel product based on a flexibility range**

**Examiner's Factual Findings**

The Examiner asserts that "a penalty for failing to complete the payment of accepted ticket offers" teaches *a price for sale of a travel product*. [Seventh Office Action, page 2]. "Col. 7, lines 19-52 [of the Walker '534 patent] specify that one of the prices that can be charged to a customer is a penalty fee for failing to accept an offer for ticket [sic] that the customer has requested." [Seventh Office Action, page 4].

The Examiner provided the following explanation of his interpretation during a Telephone Interview:

Examiner maintained that a "price for sale" is any price presented or offered to the customer. Since the penalty price is literally what is presented to the customer for refusing an offer, it is literally the price for sale, since it is the price which the customer is presented.

[Third Interview Summary, page 3]. Appellants do not understand this explanation.

The Examiner clearly understands that the cited portion of the Walker '534 patent is with respect to a situation in which no sale or purchase takes place. "Although the Examiner acknowledged that the penalty is described as being charged if a ticket is not booked (i.e., the customer is not purchasing a travel product), the Examiner nevertheless also asserted that the penalty described in

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Walker '534 suggests a price for sale of a travel product. [Appellants' Interview Summary, page 2]. Also, the Examiner acknowledges that the "penalty price" is "for refusing an offer" (i.e., not for a sale of a travel product). [Third Interview Summary, page 3].

Confusingly, the Examiner also stated during that Telephone Interview that the "penalty" of Walker '534 for not booking a ticket suggests an "offer for sale" of a travel product. [Appellants' Interview Summary, page 2]. Appellants do not know how to reconcile this statement with the statement (cited above) that the "penalty price" is for "refusing an offer." The Examiner appears to be stating that the "penalty price" is itself an "offer for sale" that is imposed for rejecting an "offer."

The Examiner further confuses the record by providing the following basis for another interpretation of *price for sale of a travel product* in the Seventh Office Action:

...the exact term "price for sale" is never explicitly recited or defined. As a result, the Examiner does not consider the specification as providing any insight on how this term should be interpreted. The term is thus left open to a broadest reasonable interpretation....

[page 6]. The Examiner's misunderstanding of proper claim construction and "broadest reasonable interpretation" is discussed below.

Relying on what he describes as his ability to provide a "broadest reasonable interpretation," the Examiner provides another interpretation of *price for sale of a travel product* where he asserts:

"sale" does not necessarily have to be a transfer of money. In the context of the prior art reference Walker et al. ('534), a sale can be

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an offer made by a potential buyer and an acceptance by a potential airline. The penalty in Walker et al. is a fee that is charged subsequent to the offer and acceptance. In other words, the fee is [sic—the?] price charged in relation to [sic—a?] transaction that is definable as a sale.

[Seventh Office Action, page 6]. The Examiner does not provide any evidentiary support for this “broadest reasonable interpretation” or specifically his interpretation of “sale,” or *price for sale of a travel product*.

As best understood by Appellants, the Examiner is asserting that the “broadest reasonable interpretation” of the feature of a *price for sale of a travel product* is: any price charged in relation to a transaction that is definable as a sale.

#### No Substantial Evidence Has Been Provided

The Examiner has thus expressed his misunderstanding of proper claim construction. During prosecution, claim language is always subject to a “broadest reasonable interpretation.” See In re Morris. Further, merely because the “exact term” is not recited does not mean that the Specification cannot provide “any insight,” as implied by the Examiner. The claimed subject matter, for example, is adequately described and enabled by the Specification by various illustrative embodiments and examples; the Examiner does not assert otherwise.

Also, even if the Specification provides no “insight,” as asserted by the Examiner, the “broadest reasonable interpretation” must be consistent with what would be understood by one of ordinary skill in the art. See In re Morris; In re Cortright. Contrary to what is required, the Examiner has provided no evidence that one of ordinary skill in the art would interpret *price for sale of a travel*

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*product* as the Examiner has done. The Examiner, in fact, has admitted that the “penalty” in the Walker ‘534 patent occurs in a context where no sale takes place, and thus the “penalty” itself cannot suggest *a price for sale of a travel product*. Also, where the term “penalty” is used in the present Specification, it is used to describe an amount levied against a traveler for rejecting all identified qualifying products (i.e., not a price for sale). [See, e.g., Specification, page 15, lines 21-22]. Despite the Examiner’s own admission as to what the Walker ‘534 patent teaches one of ordinary skill in the art with respect to “penalty,” and despite evidence of the present Specification with respect to “penalty,” the Examiner maintains an unreasonable interpretation of “penalty” as discussed in the Walker ‘534 patent.

In asserting his “broadest reasonable interpretation,” the Examiner has strayed from what is reasonable. The proposed interpretation ignores that the price is *a price for sale of a product*, which anyone of ordinary skill would recognize (consistent with the Specification) as a price at which the product is available for purchase by or sale to a customer. Instead, the Examiner focuses inappropriately only on the broadest conceivable (by the Examiner) interpretation of the word “sale” to arrive at an unreasonable interpretation that encompasses any price somehow related to any type of transaction that might be somehow definable as a sale. This parsing out of, and inappropriate consideration of, the word “sale,” is unreasonable in that it ignores the context and meaning of the claimed phrase *price for sale of something* (in this case, *a travel product*).

In contrast to the Examiner’s unreasonable and strained interpretation, the recited language clearly suggests a price for a travel product that is for sale, i.e., a

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price at which a travel product is offered for sale or available for purchase (e.g., by a customer).

Various embodiments of the present invention are directed to pricing a travel product, which may include *determining a price for sale of a travel product based on a flexibility range*, as generally recited in each of independent Claims 3, 4, 72, and 89.

To the extent that the Examiner is relying solely upon the Walker '534 patent as teaching a feature of *determining a price for sale of a travel product based on a flexibility range*, the Section 102(e) rejection cannot stand. The Examiner has failed to establish a *prima facie* case of anticipation, and the Walker '534 patent cannot support any such rejection.

**3.1.5. No substantial evidence of wherein said first price is determined by scoring said first flexibility range to obtain a score and using said score to determine a percentage [OR monetary] discount off of an established price**

#### Examiner's Factual Findings

The Examiner asserts:

The acceptance rate is scored by rating the customer (col. 7, line 21). The penalty amount can be different from the ticket price. Thus, a difference exists between the first price and the second price. This difference is readable as a percent discount. For example, if the ticket is \$100 and the penalty is \$50, the difference is 50%, which is readable as the claimed "discount".

[Seventh Office Action, page 2].

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### No Substantial Evidence

The Examiner has misinterpreted the recited claim language and the Walker '534 patent. As best understood by Appellants, the Examiner is generally asserting that any one given number may be expressed mathematically as a percentage of any other given number (regardless of how each number may itself be derived). The Examiner concludes from this that because the Walker '534 patent teaches both a "ticket price" and a "penalty," the difference between the "normal price" and the "penalty" must teach a "percent discount." Appellants disagree with the Examiner's analysis for several reasons.

The Walker '534 patent does not disclose any relationship between the "ticket price" and the "penalty." Merely because any two numbers could potentially be expressed mathematically as percentages of one another, does not mean that the Walker '534 patent suggests any such calculation. There is no suggestion in the record of any such determination; nothing in the record is "readable as the percent discount." Appellants accept that the "penalty amount can be different from the ticket price." That alone, however, does not suggest a discount off of one of those prices, much less a discount determined using a score. Simply, contrary to the Examiner's assertion and unsupported example, there is no suggestion of determining a percentage difference between the "ticket price" and the "penalty."

Further, the Examiner ignores the plain language of the claims. The claimed *percentage* or *monetary discount off of an established price* is expressly determined using the *determined score* (which is itself determined by *scoring the flexibility range*). There is no suggestion in the Walker '534 patent of using any

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score to determine a *percentage* or *monetary discount* that is *off of an established price*. In fact, the example proposed by the Examiner (which is not supported by any evidence of record) requires first determining two prices (the “ticket price” and the “penalty”) in order to calculate the discount. If, as in the Examiner’s example, the two prices are already known, it is not clear why the Walker ‘534 patent would suggest a need to determine the precise percentage difference between the two, as implied by the Examiner.

Applicants respectfully submit that the Walker ‘534 patent does not teach or suggest *determining a first price for sale of a travel product based on said first flexibility range, wherein said first price is determined by scoring said first flexibility range to obtain a score and using said score to determine a percentage discount off of an established price*, as generally recited in independent Claims 3 and 72.

Similarly, Applicants respectfully submit that Walker ‘534 does not teach or suggest *determining a first price for sale of a travel product based on said first flexibility range, wherein said first price is determined by scoring said first flexibility range to obtain a score and using said score to determine a monetary discount off of an established price*, as generally recited in independent Claims 4 and 89.

To the extent that the Examiner is relying solely upon the Walker ‘534 patent as teaching the above features, the Section 102(e) rejection cannot stand. The Examiner has failed to establish a *prima facie* case of anticipation, and the Walker ‘534 patent cannot support any such rejection.

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Accordingly, for at least those reasons, the claims of GROUP I are patentable in view of the cited reference.

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**SEPARATE ARGUMENT OF PATENTABILITY****3.2. GROUP II: Claims 67 and 84**

GROUP II includes Claims 67 and 84. These claims are rejected under Section 102(e) as being anticipated by the Walker '534 patent.

The rejection of GROUP II is flawed because the Examiner has not made a prima facie case of anticipation:

- the Examiner has misinterpreted the limitation of *providing a voucher to a customer to enable the purchase of an identified travel product*
- no substantial evidence that such a feature was known has been provided

Each of Claims 67 and 84 depends from an independent claim argued in GROUP I. Accordingly, all of the arguments made above with respect to GROUP I are equally applicable to the claims of GROUP II.

In addition, Claims 67 and 84 are argued separately because the Examiner has failed to establish that the Walker '534 patent teaches or suggests *providing a voucher to a customer to enable the purchase of an identified travel product*, which is generally recited in each of Claims 67 and 84.

The Examiner asserts: "Examiner maintains that any record of information, including a CPO, is a voucher. The prior art reference to Walker et al. also provides additional examples of vouchers, such as notifications to the customer regarding the CPO...." [Seventh Office Action, page 6].

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The Examiner has effectively asserted that a CPO is a voucher, and that any information about a voucher (i.e., “such as notifications to the customer regarding the CPO”) is also a voucher. The Examiner provides no evidence in support of this interpretation of “voucher” that encompasses any “record of information.”

Appellants respectfully submit that that the Examiner has mischaracterized the conditional purchase offer (CPO) of the Walker ‘534 patent in asserting the CPO “is readable as the claimed voucher provided to the customer.” [Seventh Office Action, page 4 (emphasis added)]. In fact, as described in the Walker ‘534, the CPO is a “binding offer” provided by the customer to the system. [See, e.g., Column 5, lines 8-23]. Thus, there is no suggestion that the CPO of the Walker ‘534 patent teaches *providing a voucher to a customer to enable the purchase of an identified travel product*, as generally recited in Claims 67 and 84.

With respect to the Examiner’s assertion that a “voucher” is “any record of information” (and thus may comprise any purported information about a CPO), Appellants submit that such an interpretation is not reasonable given the understanding of one skilled in the art consistent with the Specification. The Examiner has ignored the meaning of *voucher* as it is clearly described in the Specification:

In a “voucher-sale” embodiment, a voucher is issued to a traveler that establishes a right to travel.... The voucher can be exchanged for a confirmed ticket in accordance with the customized restrictions specified by the corresponding airline.

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[page 5, lines 1-5; see also, page 8, lines 17-22; FIG. 8; page 16, lines 19-24].  
Thus, the claimed voucher is not simply "any record of information," but is associated with a right to travel.

The Examiner has not provided any evidence of record of a voucher that is associated with a right to travel.

To the extent that the Examiner is relying solely upon the Walker '534 patent as teaching the claimed *voucher*, the Section 102(e) rejection cannot stand. The Examiner has failed to establish a *prima facie* case of anticipation, and the Walker '534 patent cannot support any such rejection.

Accordingly, for at least those reasons, the claims of GROUP II are patentable.

GROUP II

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#### 4. Conclusion

Thus, the Examiner's rejection of the pending claims is improper at least because the Examiner has not provided a proper legal basis for rejecting any claim. Therefore, Appellants respectfully request that the Examiner's rejections be reversed.

If any issues remain, or if there are any further suggestions for expediting allowance of the present application, please contact Michael Downs using the information provided below.

Appellants hereby request any extension of time that may be required to make this Appeal Brief timely. Please charge any fees that may be required for this paper, or credit any overpayment, to Deposit Account No. 50-0271.

Respectfully submitted,

September 20, 2004

Date



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## APPENDIX A – CLAIMS

Claims 3, 4, 56-69, 72-86, and 89 are being appealed.

Claims 3, 4, 72, and 89 are independent.

3. A method for pricing a travel product, comprising the steps of:
- obtaining a first flexibility range from a first customer;
  - obtaining a second flexibility range from a second customer;
  - identifying at least one travel product that satisfies said first flexibility range and said second flexibility range;
  - determining a first price for sale of said identified travel product based on said first flexibility range; and
  - determining a second price for sale of said identified travel product based on said second flexibility range,
- wherein said first price is determined by scoring said first flexibility range to obtain a score and using said score to determine a percentage discount off of an established price.

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4. A method for pricing a travel product, comprising the steps of:  
obtaining a first flexibility range from a first customer;  
obtaining a second flexibility range from a second customer;  
identifying at least one travel product that satisfies said first flexibility range and said second flexibility range;  
determining a first price for sale of said identified travel product based on said first flexibility range; and  
determining a second price for sale of said identified travel product based on said second flexibility range,  
wherein said first price is determined by scoring said first flexibility range to obtain a score and using said score to determine a monetary discount off of an established price.

56. The method of claim 3, in which said first flexibility range is specified in terms of a preferred travel product.

57. The method of claim 3, in which said first flexibility range is specified by a set of tolerances for at least one variable component of said travel product.

58. The method of claim 3, in which said first flexibility range is specified in terms of a minimum value and a maximum value for at least one variable component of said travel product.

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59. The method of claim 3, in which said first flexibility range includes at least one acceptable time.

60. The method of claim 3, in which said first flexibility range includes at least one acceptable date.

61. The method of claim 3, in which said first flexibility range includes a desired level of service.

62. The method of claim 3, in which said first flexibility range includes an acceptable location assignment.

63. The method of claim 3, in which identifying comprises:  
receiving information about a maximum price from said customer; and  
identifying a travel product having a price that is not greater than the maximum price.

64. The method of claim 3, in which identifying comprises:  
receiving information about a travel product that is preferred by said customer; and  
identifying a travel product other than the travel product that is preferred by said customer.

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65. The method of claim 3, in which identifying comprises:  
determining a set of travel products satisfying said first flexibility range;  
and  
selecting said identified travel product at random from the set of travel  
products.

66. The method of claim 3, in which identifying further comprises:  
selecting said identified travel product based on revenue management  
information.

67. The method of claim 3, further comprising:  
providing a voucher to said customer to enable the purchase of one of said  
identified travel products.

68. The method of claim 67, further comprising:  
recording identifying information about said voucher.

69. The method of claim 3, further comprising:  
charging a penalty to said customer if said customer fails to purchase said  
identified travel product.

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72. An article of manufacture comprising:  
a computer readable medium having computer readable code means embodied thereon, the computer readable program code means comprising:  
a step to obtain a first flexibility range from a first customer;  
a step to obtain a second flexibility range from a second customer;  
a step to identify at least one travel product that satisfies the first flexibility range and the second flexibility range;  
a step to determine a first price for sale of the identified travel product based on the first flexibility range; and  
a step to determine a second price for sale of the identified travel product based on the second flexibility range,  
in which the step to determine the first price comprises:  
a step to score the first flexibility range to obtain a score; and  
a step to use the score to determine a percentage discount off of an established price.

73. The method of claim 4, in which said first flexibility range is specified in terms of a preferred travel product.

74. The method of claim 4, in which said first flexibility range is specified by a set of tolerances for at least one variable component of said travel product.

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75. The method of claim 4, in which said first flexibility range is specified in terms of a minimum value and a maximum value for at least one variable component of said travel product.

76. The method of claim 4, in which said first flexibility range includes at least one acceptable time.

77. The method of claim 4, in which said first flexibility range includes at least one acceptable date.

78. The method of claim 4, in which said first flexibility range includes a desired level of service.

79. The method of claim 4, in which said first flexibility range includes an acceptable location assignment.

80. The method of claim 4, in which identifying comprises:  
receiving information about a maximum price from said customer; and  
identifying a travel product having a price that is not greater than the maximum price.

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81. The method of claim 4, in which identifying comprises:  
receiving information about a travel product that is preferred by said  
customer; and

identifying a travel product other than the travel product that is preferred by  
said customer.

82. The method of claim 4, in which identifying comprises:  
determining a set of travel products satisfying said first flexibility range;  
and

selecting said identified travel product at random from the set of travel  
products.

83. The method of claim 4, in which identifying further comprises:  
selecting said identified travel product based on revenue management  
information.

84. The method of claim 4, further comprising:  
providing a voucher to said customer to enable the purchase of one of said  
identified travel products.

85. The method of claim 84, further comprising:  
recording identifying information about said voucher.



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86. The method of claim 4, further comprising:  
charging a penalty to said customer if said customer fails to purchase said  
identified travel product.

89. An article of manufacture comprising:  
a computer readable medium having computer readable code means  
embodied thereon, the computer readable program code means comprising:  
a step to obtain a first flexibility range from a first customer;  
a step to obtain a second flexibility range from a second customer;  
a step to identify at least one travel product that satisfies the first flexibility  
range and the second flexibility range;  
a step to determine a first price for sale of the identified travel product  
based on the first flexibility range; and  
a step to determine a second price for sale of the identified travel product  
based on the second flexibility range,  
in which the step to determine the first price comprises:  
a step to score the first flexibility range to obtain a score; and  
a step to use the score to determine a monetary discount off of an  
established price.

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## APPENDIX B – EVIDENCE

<NONE>

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## APPENDIX C – RELATED PROCEEDINGS

<NONE>

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**Re:** Application Serial No. 09/359,265- Attorney Docket No. 99-055  
**Title:** "SYSTEM AND METHOD FOR PRICING A TRAVEL PRODUCT BASED ON A  
TRAVELER'S SPECIFIED DEGREE OF FLEXIBILITY"

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UNDER 37 C.F.R. 1.136(a) (Small Entity)**Docket No.  
99-055

In Re Application Of: JAY S. WALKER et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/359,265	July 22, 1999	RIMELL, Samuel G.	22927	2175	2597

Invention:

**SYSTEM AND METHOD FOR PRICING A TRAVEL PRODUCT BASED ON A TRAVELER'S SPECIFIED DEGREE  
OF FLEXIBILITY**COMMISSIONER FOR PATENTS:

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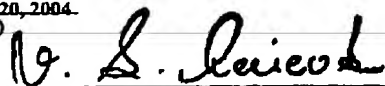
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Application No. 09/359,265	Filing Date July 22, 1999	Examiner RIMELL, Samuel G.	Customer No. 22927	Group Art Unit 2175	Confirmation No. 2597
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Invention:

**SYSTEM AND METHOD FOR PRICING A TRAVEL PRODUCT BASED ON A TRAVELER'S SPECIFIED DEGREE  
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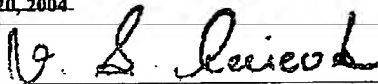
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